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# In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 566

IN THE MATTER OF THE ESTATE OF ANTON BELEMECICH, DECEASED

THE CONSUL GENERAL OF YUGOSLAVIA AT PITTSBURGH, PENNSYLVANIA, AS ATTORNEY-IN-FACT FOR ANE BULIK, MATO BELEMECICH, ANE BELEMECICH KLJUNAK, MARIA BELEMECICH AND PERA BELEMECICH BOSCOVICH, PETITIONER

*v.*

COMMONWEALTH OF PENNSYLVANIA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA*

## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

### OPINIONS BELOW

The opinions of the Orphans' Court of Delaware County, Pennsylvania, incorporated in its Adjudication Sur First Account and Order Amending and Modifying Adjudication (Pet. App. 11a–20a), are not reported. The opinion of the Supreme Court of Pennsylvania (Pet. App. 1a–9a) is reported at 192 A. 2d 740.

## JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered on July 2, 1963. A timely petition for rehearing was denied on July 23, 1963. The petition for a writ of certiorari was filed on October [illegible], 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

## QUESTION PRESENTED

A Pennsylvania statute provides that whenever it shall appear that a beneficiary who is entitled to share in the distribution of an estate and who is not a resident of the United States would not have the actual use or enjoyment of the property if distributed to him, the courts may direct that the distribution be made into the State Treasury without escheat. The question presented is whether the 1881 Treaty of Commerce between the United States of America and Serbia guarantees to Yugoslavian citizens residing in that country the same rights to acquire, possess and dispose of inherited personal property located in the United States as they would have if they were American citizens residing in the United States, thereby precluding application of the Pennsylvania statute to bar a distribution to the heirs of a Pennsylvania decedent who are citizens and residents of Yugoslavia.

## TREATY AND STATUTE INVOLVED

The relevant provisions of the 1881 Treaty of Commerce between the United States of America and Serbia, 22 Stat. 963, II Malloy 1613, and the Pennsylvania Act of Assembly of July 28, 1953, P.L. 674, 20 P.S. Secs. 1155–1159, are set forth in App. A, *infra*, pp. 12–15.

## STATEMENT

Anton Belemecich, a resident of Pennsylvania, died intestate in 1958, survived by certain next-of-kin who are residents and citizens of Yugoslavia. He left an estate in Pennsylvania which was administered in the Orphans' Court of Delaware County, Pennsylvania. In its Adjudication Sur First Account, that court determined that the Yugoslavian next-of-kin, represented by their attorney-in-fact, the Consul General of Yugoslavia at Pittsburgh (petitioner in this Court), were the decedent's sole survivors entitled to share in his estate under the intestate laws of Pennsylvania (Pet. App. 11a, 12a). The court also determined, however, that there was no assurance that the heirs would have the beneficial use of their inheritance, concluding that the Yugoslavian government might confiscate the distributive shares if the funds were actually transmitted to Yugoslavia. Accordingly, under the authority of the Pennsylvania Act of Assembly of July 28, 1953, popularly called the "Iron Curtain Act," App. A, *infra*, pp. 13–15, the Orphans' Court refused to order distribution of the estate. Instead, it made a cash award of the share of each heir to the Department of Revenue of the Commonwealth of Pennsylvania for payment into the state treasury without escheat, to be held for the benefit of the respective heirs (Pet. App 16a–18a).[1]

[1] The court later amended and modified this order to permit a conditional distribution of $500 to be made to each heir through petitioner's attorney. The remainder of the monies was ordered to be paid to the clerk of the court pending further order (Pet. App. 19a–20a).

On appeal, the Supreme Court of Pennsylvania, with one dissent, affirmed (Pet. App. 1a–9a). The majority held (1) that the order of the Orphans' Court did not offend the 1881 Treaty of Commerce between the United States of America and Serbia, App. A, *infra*, pp. 12–13, because that treaty provides only that there shall be reciprocal rights of inheritance between citizens of the two nations, and the decision in this case does not deny to the citizens of Yugoslavia the right of inheritance through American relatives; and (2) this Court's decision in *Kolovrat* v. *Oregon*, 366 U.S. 187, is not controlling since the Oregon statute involved there was a confiscatory one, while the one involved here is merely custodial (Pet. App. 7a–8a).

### INTEREST OF THE UNITED STATES

In upholding the application of the Pennsylvania statute to a Yugoslavian beneficiary, the Supreme Court of Pennsylvania has construed the 1881 Treaty of Commerce between the United States and Serbia in a manner which is of doubtful correctness in light of *Kolovrat* v. *Oregon*, 366 U.S. 187. The correct construction of the 1881 Treaty is a matter of considerable importance to the United States in the conduct of its foreign relations,[2] particularly since the United States is signatory to numerous other similar treaties. It was for this reason that the United States participated as *amicus curiae* in the *Kolovrat* case.

[2] The Yugoslavian Government has called the attention of the Department of State to the decision of the court below (see App. B, *infra*, pp. 16–17).

REASONS FOR GRANTING THE WRIT

In *Kolovrat* v. *Oregon*, this Court held that application of an Oregon statute—one which restricted the rights of non-resident aliens to inherit property located in that State—so as to bar inheritance by Yugoslavian citizens and residents was in conflict with the Treaty of Commerce of 1881 between the United States and Serbia. Broadly, the Court concluded that under this treaty a Yugoslavian has the same right to inherit his relatives' personal property located in the United States as he would if he were an American citizen residing in the State where the property is located.

In the instant case, the Supreme Court of Pennsylvania has held that a Pennsylvania statute which in terms restricts the rights of inheritance of all non-resident beneficiaries was properly applied to bar distribution of an estate to beneficiaries who are citizens and residents of Yugoslavia. The holding denies to these beneficiaries rights of inheritance equal to those enjoyed by American citizens residing in Pennsylvania and similarily raises important questions as to the effect of the Treaty of 1881.

1. In 1953, Pennsylvania adopted its so-called "Iron Curtain Act" (App. A, *infra*, pp. 13–15), which establishes a procedure for withholding distribution of money or property to beneficiaries who are not residents of the United States, whenever it appears that such beneficiaries "would not have the actual benefit, use, enjoyment or control of the money or other property distributed * * *." Upon such a finding, the Act empowers the courts to direct the fiduciary to

"withhold distribution of the share of such beneficiary, convert it to cash, and pay it through the Department of Revenue into the State Treasury without escheat" (Sec. 2, App. A, *infra*, p. 14). Section 4 of the Act provides that the courts may order repayment of the funds with interest at 2 percent upon petition of any beneficiary and proof "that he will have the actual possession, benefit, use, enjoyment or control thereof * * *" (App. A, *infra*, pp. 14–15).

In this case, the Orphans Court of Delaware County, affirmed by the Supreme Court of Pennsylvania, applied the statute to bar distribution of property located in Pennsylvania to heirs who are citizens and residents of Yugoslavia. It did so over objections that this course would conflict with the Treaty of Commerce of 1881 (Article II), which guarantees that the citizens of the signatory countries are to be "free to receive, hold and dispose of property by trading, donation, marriage, inheritance or any other manner 'under the same conditions as the subjects of the most favored nation.'" *Kolovrat* v. *Oregon*, 366 U.S. at 193. As this Court recognized in *Kolovrat*, this most-favored-nation provision in turn grants to Yugoslavian citizens all the rights and privileges accorded in the Treaty of Friendship, Commerce, and Navigation between the United States and the Argentine Confederation of 1853, 10 Stat. 1005, 1009, which declares (Article IX):

> In whatever relates to * * * acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament, or in any other manner whatsoever, * * *

> the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties, and rights, as native citizens * * *.

If the provision of the Argentine Treaty relating to "native citizens" accords Yugoslavian citizens resident in Yugoslavia the same rights to acquire and dispose of property that they would have if they were citizens of the United States resident in this country, the decision below cannot stand.[3]

2. In *Kolovrat* v. *Oregon,* this Court, after an intensive analysis of the Treaty of 1881, gave the provision for "national treatment" precisely this interpretation, stating (366 U.S. at 196):

> We hold that under the 1881 Treaty, with its "most favored nation" clause, these Yugoslavian claimants have the same right to inherit their relatives' personal property as they would if they were American citizens living in Oregon * * *.

We recognize that the issue in *Kolovrat*—as distinguished from that presented here—did not require the Court to rule that under the 1881 Treaty the standard for treatment of Yugoslavian claimants is that accorded American citizens *residing in the United States.* The Oregon statute there involved[4] applied

[3] It is, of course, beyond question that no state law or policy can abrogate rights guaranteed to foreign citizens in treaties entered into by the United States. *Kolovrat* v. *Oregon,* 366 U.S. 187; *Clark* v. *Allen,* 331 U.S. 503, 515, 517.

[4] Oregon Rev. Stat., Sec. 111.070 provides:

"(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as

only to non-resident aliens, barring their inheritance of property located in Oregon under certain circumstances. Therefore, it may be argued that resolution of the precise issue presented in *Kolovrat* required the Court to determine only that the Treaty of 1881 guarantees to Yugoslavian residents rights of inheritance equal to those enjoyed by American citizens. The fact remains that the opinion is not so narrowly drawn. The Court's examination of the treaty provisions led it to conclude that the rights of Yugoslavians are to be equated with the rights of resident citizens of the United States.

Moreover, the Supreme Court of Pennsylvania did not suggest that *Kolovrat* is to be distinguished on

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inhabitants and citizens of the United States, is dependent in each case:

"(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

"(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

"(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.

"(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

"(3) If such reciprocal rights are not found to exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property."

the basis of the possible application of the Pennsylvania statute to non-resident United States citizens. Rather, it stressed the fact that, while the Oregon statute provided for an escheat, the Pennsylvania act provides that the Commonwealth of Pennsylvania is to assume custody of the monies for the benefit of the beneficiaries, who may, upon an appropriate showing, obtain repayment. This line cannot be drawn. Article II of the 1881 Treaty makes no distinction among the rights of "acquiring, possessing or disposing" of personal property. All are guaranteed equally.[5] Indeed, the very sense and meaning of Article II would be unnaturally strained if the rights of "possessing" and "disposing" of property were accorded any lesser treatment than the right of "acquiring" it, guaranteed in the same sentence and phrase. Therefore, although this Court's opinion in *Kolovrat* mentions only the right to inherit personal property, it is obvious that the Court's pronouncement extends with equal force to the right of possessing it.

3. The proper interpretation of the relevant treaty provisions, if not already settled, should be laid to rest. It is of obvious concern to the Government of Yugoslavia which has called the decision of the court below to the attention of the Department of State (see App. B, *infra,* pp. 16–17). It affects other foreign governments as well. The United States has entered into numerous treaties which contain provisions similar to those of the 1881 Treaty with Serbia.[6]

[5] See App. A, *infra*, p. 12.

[6] See, e.g., Consular Convention with France of 1853, 10 Stat. 992, I Malloy 528; Treaty of Friendship, Commerce, and Navigation, between the United States and the Argentine Confedera-

The approach adopted by the Pennsylvania courts has added potential impact in view of the fact that numerous States have enacted similar statutes.[7] The interrelation of such statutes and the provisions of United States treaties has already been a subject of divergent views in the state courts.[8]

Finally, we point out that the decision of the court below is likewise of prospective importance to American legatees and heirs of foreign decedents. If the 1881 Treaty has only the limited meaning attributed to it below, it is reasonable to expect that the foreign signatories to treaties of this type may impose added restrictions upon the claims of American citizens.

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tion of 1853, 10 Stat. 1005, I Malloy 20; Convention with the Swiss Confederation of 1850, 11 Stat. 587, II Malloy 1763; Convention with Brunswick and Luneburg of 1854, 11 Stat. 601; Treaty of Amity, Commerce, and Consular Privileges between the United States and the Republic of Salvador, 1870, 18 Stat. 725; Treaty of Friendship, Commerce and Navigation between the United States of America and the Republic of Peru, 1870, 18 Stat. 698.

[7] Gen. Stat. of Connecticut (1958 Revision), Sec. 45-278, C.G.S.A., Sec. 45-278; Florida Stat. Ann., Sec. 731.28; Ann. Code of Maryland, Art. 93, Sec. 161; Ann. Laws of Massachusetts, Ch. 206, Sec. 27A; New Jersey Pub. Laws, Ch. 148, Sec. 1 (1940), N.J.S.A., Sec. 3A:25-10; New York Sur. Ct. Act, Sec. 269-a; Ohio Rev. Code Ann., Sec. 2113.81; Gen. Laws of Rhode Island, Sec. 33-13-13; Wisconsin Stat. Ann., Sec. 318-06(8). In addition to the Pennsylvania provision involved in this case, see also Pennsylvania P.L. 512, Art. VII, Sec. 737 (1956), 20 P.S. Sec. 320.737.

[8] For example, the decisions of *In re Offinger's Estate*, 28 Misc. 2d 633, 215 N.Y.S. 2d 642, under New York Sur. Ct. Act, Sec. 269-a, and *Aras Estate*, 16 D & C 2d 635, under the Pennsylvania statute involved in this litigation, both involved Yugoslavian residents, yet reached a result contrary to the one affirmed by the Supreme Court of Pennsylvania below.

## CONCLUSION

For the reasons stated above, we believe that the question presented by this case warrants review and that the petition for a writ of certiorari should be granted.

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JOHN W. DOUGLAS,
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ALAN S. ROSENTHAL,
FREDERICK B. ABRAMSON,
*Attorneys.*

NOVEMBER 1963.

# APPENDIX A

## Treaty of Commerce Between The United States of America and Serbia

* * * * *

The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty, and have named * * * their respective plenipotentiaries * * *

Who * * * have agreed upon and concluded the following articles:

* * * * *

### Article II

In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatsoever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state.

* * * * *

In faith whereof the plenipotentiaries of the two high contracting parties have signed the present treaty in duplicate in the English and Serbian languages, and thereto affixed their respective seals.

Done in duplicate at Belgrade this 2–14 day of October 1881.

[SEAL] EUGENE SCHUYLER.
CH. MIJATOVICH.

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PENNSYLVANIA ACT OF ASSEMBLY OF JULY 28, 1953

LAWS OF PENNSYLVANIA (1953), SECS. 1–6 (P.L. 674, 20 P.S. SECS. 1155–1159)

No. 209

AN ACT

To authorize courts to direct fiduciaries to make partial distribution or to pay into the State Treasury without escheat moneys, the use, benefit, enjoyment or control of which would not be available to certain non-resident beneficiaries under certain conditions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

SECTION 1. Definitions.—The following terms when used in this act, unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this section:

"Beneficiary" shall mean and include any legatee, devisee, distributee or other person

who is entitled to share in the distribution of money or other property held by a fiduciary and who is not a resident of the United States, its territories or possessions.

"Fiduciary" shall mean and include any executor, administrator, trustee or guardian, whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of a court.

"Court" shall mean the court of record having jurisdiction over the fiduciary.

SECTION 2. Decree of Partial Distribution or of Payment Without Escheat.—Whenever it shall appear to the court that if distribution were made a beneficiary would not have the actual benefit, use, enjoyment or control of money or other property distributed to him by a fiduciary, the court shall have the power and authority to direct the fiduciary (a) to make payment of the share of such beneficiary at such times and in such manner and amounts as the court may deem proper, or (b) to withhold distribution of the share of such beneficiary, convert it to cash, and pay it through the Department of Revenue into the State Treasury without escheat.

SECTION 3. Custody of Funds in Commonwealth; Fiduciary Released.—Upon receipt of the money directed to be paid into the State Treasury, the Commonwealth shall assume the custody of such money for the benefit of such beneficiary. The fiduciary, by making such payment, shall thereafter be relieved of and released from any and all liability for any claim or claims which then exist or thereafter arise with respect to such money.

SECTION 4. Repayment.—Any beneficiary or person, legally entitled to any money which has been paid into the State Treasury under the provisions of this act, may at any time petition the court which directed such payment into the State Treasury for re-

payment of the same. Upon proof to the satisfaction of the court of the petitioner's ownership of such money and that he will have the actual possession, benefit, use, enjoyment or control thereof, the court shall enter a decree directing the Board of Finance and Revenue to make an order for repayment, payable out of funds in the State Treasury appropriated for that purpose, with interest thereon at the rate of two percentum per annum from the date when the said money was paid into the State Treasury to the date of repayment thereof.

SECTION 5. Appeals.—Any party in interest may appeal, as in other cases, from any order or decree of the court entered pursuant to the authority of this act.

SECTION 6. This act shall become effective immediately upon its final enactment; and shall apply to any money or other property of any beneficiary not distributed prior to that date.

Approved the 28th day of July A.D. 1953.

JOHN S. FINE.

## APPENDIX B

### PRO MEMORIA

The attention of the Department of State is called to the judgment of the Supreme Court of Pennsylvania (Eastern District) No. 84, January Term, decided July 2, 1963, in the matter of the estate of Anton Belemecich, deceased.

It appears obvious that the above mentioned judgment of the Supreme Court of Pennsylvania runs contrary to Article II of the Convention between the United States of America and Serbia for Facilitating and Developing Commercial Relations of October 14, 1881, 22 Stat. 968, T.S. 320, and to Article 5 of the Agreement between the Governments of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Nationals, of July 19, 1948, 62 Stat. 2658, T.I.A.S. 1803.

It is recalled that the Supreme Court of the United States in the case of *Andja Kolovrat, et al., Petitioners* v. *Oregon,* No. 102, October Term, 1960, interpreting the above mentioned treaties and the International Monetary Fund (Bretton Woods) Agreement of 1944, 60 Stat. 1401, T.I.A.S. 1501, to which the United States of America and Yugoslavia are signatories, ruled that Yugoslav nationals, regardless of their residence, are entitled to inherit property in the United States as well as to have such inherited property transferred to them to Yugoslavia.

It appears appropriate to recall the note to the Secretary of Yugoslavia from the Department of State, dated April 24, 1958, 211.683/4–1858, by which the Department of State expressed its opinion that the

rights of acquisition, possession, or disposition of property, including the rights of inheritance and transfer of proceeds thereof, in the United States are accorded to Yugoslav nationals irrespective of their residence and of the decedent's nationality.

It is intended, in the circumstances, to apply as promptly as possible on behalf of the Yugoslav heirs to the Supreme Court of the United States for a writ of certiorari.

[YUGOSLAVIAN EMBASSY]

SEPTEMBER 3, 1963.

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